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Letter dated 21 November 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 September 2003 (S/2003/905).

The Counter-Terrorism Committee has received the attached third report from Nepal, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 18 November 2003 from the Permanent Representative of Nepal to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In pursuance of paragraph 6 of Security Council resolution 1373 (2001), I have the honour to transmit herewith the third report of His Majesty's Government of Nepal in connection with your letter dated 18 September 2003 (see enclosure).

(*Signed*) Murari Raj **Sharma**
Permanent Representative

Enclosure

Third report by Nepal on the implementation of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 The CTC has agreed on further questions and comments for the consideration of the Government of Nepal with regard to the implementation of the Resolution, as set out in this section.

1.2 Effective implementation of sub-paragraph 1 (b) of the Resolution requires a State to have in place provisions specifically criminalizing the wilful provision or collection of funds by its nationals or in its territory, by any means directly or indirectly, with the intention that the funds should be used, or the knowledge that they are to be used to carry out terrorist acts. For an act to constitute an offence as described above it is not necessary that the funds are actually used to carry out a terrorist offence (see article 2, paragraph 3, of the International Convention for the Suppression of the Financing of Terrorism). The acts sought to be criminalized are thus capable of being committed even if:

- **The only related terrorist act takes place or is intended to take place outside the country;**
- **No related terrorist act actually occurs or is attempted;**
- **No transfer of funds from one country to another takes place;**
- **The funds are legal in origin.**

Nepal indicates in its supplementary report that in terms of section 3 (1) of the Terrorism and Disruptive Activities Act 2058 (2002), no one can forcibly collect funds including in kind. This provision appears not fully to meet the requirement of sub-paragraph 1 (b) of the Resolution as it only criminalizes the forcible collection of funds. The CTC would be grateful for an indication from Nepal of the steps which it intends taking in order fully to meet the requirements of this sub-paragraph.

His Majesty's Government of Nepal (HMG/N) is considering enacting a legislation that would bring under its umbrella all banks and other financial institutions, and would address the issues set out in UN Security Council resolution 1373. The provisions in the legislation would also attempt to comply with the obligations emanating from the bilateral and multilateral commitments of Nepal.

Similarly a draft bill on combating Money Laundering is also under consideration which would seek to criminalizing the forceful or wilful collection of money earned through corruption, drug trafficking, trafficking in persons and arms and ammunitions, and any other means deemed to be illegal. The progress made in this regard will be reported to the CTC in due course.

1.3 In reply to Paragraph 1 of the Resolution, Nepal indicates that it has legal provisions which oblige financial institutions to report suspicious transactions to the Nepal Rastra Bank. The CTC would appreciate receiving an outline of those legal provisions.

The Nepal Rastra Bank Act of 1955 has now been replaced by Nepal Rastra Bank Act, 2002. Under this Act, the Nepal Rastra Banks has full powers to regulate the functions and activities of commercial banks and financial institutions.

For the purpose of regulation, the Nepal Rastra Bank may frame rules and by-laws on matters which the Bank deems appropriate and issue necessary orders, directives and circulars; and it shall be the duty of the concerned commercial banks and financial institutions to abide by such rules, by-laws, order, directives and circular.

The Nepal Rastra Bank may issue necessary directives to commercial banks and require them to submit particulars on the following subjects:

(a) Books and accounts, profit and loss account, balance sheet and off-balance sheet, and statements of income and expenses.

(b) Prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, loan and investment in excess of the ceiling prescribed by the Bank, risk bearing commitment, position of foreign exchange, payment and electronic and other means of payment.

(c) Other particulars and documents prescribed by the Bank.

HMG/N intends to incorporate a provision in its anti-money laundering legislation to oblige the banks and financial institutions to regularly report on any transactions beyond a threshold amount including the suspicious ones.

1.4 Sub-paragraph 1(c) of the Resolution requires a State to freeze without delay the funds, financial assets or economic resources of individuals and entities, both resident and non-resident, who commit, attempt to commit or participate in or facilitate the commission of terrorist acts. It should be noted that, for this purpose, the funds and other financial resources need not be the proceeds of crime but could be legal in origin and yet be used for terrorism either within or outside the territory of Nepal. In reply to sub-paragraph 1 (c) of the Resolution, Nepal draws attention to section 5 of the Terrorist and Disruptive Activities Act 2058 (2002) which provides that the bank accounts of a suspected terrorist can be frozen. It would appear that the present legal provisions in Nepal do not make provision for the freezing of funds that regardless of origin are:

Held in the names of persons and entities identified in lists, such as those approved for the purposes of Security Council Resolution 1267 (1999) as being linked to terrorist activities;

Suspected of being linked to terrorism, but not yet used for the commission of a terrorist attack.

The CTC would appreciate knowing whether Nepal can freeze funds linked to terrorism at the request of another State and the steps it intends taking in order to fully meet the requirements of sub-paragraph 1(c) of the Resolution.

The Nepal Rastra Bank Act, 2002 empowers the Central Bank to supervise, monitor, and regulate the activities and transactions of commercial banks and other financial institutions in the country. HMG/N is considering explicitly addressing the

issue of freezing bank accounts under bilateral or multilateral arrangements by incorporating a provision in the legislation as mentioned in para 1.2 above.

1.5 The CTC would be grateful to receive the names of states with which, according to the supplementary report, Nepal provides early warning to other States through the exchange of information, in particular information related to terrorism.

Exchange of information is basically limited between contiguous district administrations of Nepal and its neighbours especially on serious and suspicious activities through international police.

1.6 In reply to sub-paragraph 3 (d) and 3 (e), Nepal indicates that it has signed one international instrument relating to terrorism and ratified six others and that it is seriously considering becoming a party to the other relevant instruments, including the Convention on Suppression of the Financing of Terrorism, 1999. The CTC would be grateful for a progress report on the implementation in domestic law of the relevant conventions and protocols relating to terrorism in which Nepal has already become a party, as well as on the prospects of Nepal joining the five conventions and protocols relating to terrorism to which it has yet to become a party.

Nepal is currently studying the relevant instruments for the purpose.

1.7 The CTC is aware that Nepal may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Nepal's response to these matters as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of resolution 1373.